LAW AND PARLIAMENTARY AFFAIRS SECRETARIAT

Notification No. LAW 13 LCA 76

Bangalore, dated the 3rd April 1976.

Ordered that the Imports and Exports (Control) Amendment Act 1976 (12 of 1976) published in Part II, Section 1 of the Gazette of India, Extraordinary dated 25th January 1976 be republished in the *Karnataka Gazette* for general information.

By Order and in the name of the Governor of Karnataka,

B. NAGESHA RAO,
Under Secretary to Government,
Department of Law and Parly. Affair

THE IMPORTS AND EXPORTS (CONTROL) AMENDMENT ACT 1976.

Assented to on 25th January 1976.
Act No. 12 of 1976.

The Imports and Exports (Control) Amendment Act, 1976.

AN
ACT

further to amend the Imports and Exports (Control) Act, 1947.

BE it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows:—

1. Short title.—This Act may be called the Imports and Exports (Control) Amendment Act, 1976.

2 Substitution of new section for section 2.—For section 2 of the Imports and Exports (Control) Act, 1947 (18 of 1947) (hereinafter referred to as the principal Act), the following section shall be substituted, namely :—

Definitions.—'2 In this Act, unless the context otherwise requires,—

(*a*) "adjudicating authority" means the authority specified in, or under, section 4K;

(*b*) "Appellate authority" means the Appellate authority referred to in section 4M;

(*c*) "Chief Controller" means the Chief Controller of Imports and Exports;

(*d*) "control order" means a control order made, or deemed to have been made under this Act;

(*e*) "customs station" has the meaning assigned to to it in the Customs Act, 1962; (52 of 1962)

(*f*) "Deputy Chief Controller" means a Deputy Chief Controller of Imports and Exports;

(*g*) "import" and "export" mean, respectively, bringing into, and taking out of, India by sea, land or air;

(*h*) "letter of authority" means a letter authorising the licensee to permit another person, named in the said letter, to import goods against the licence granted to the licensee;

(*i*) "licence" means a licence granted, and includes a customs clearance permit issued, under any control order;

(j) "prescribed" means prescribed by rules made under this Act;

(*k*) "recognised agency" means an agency to which the functions of distribution of imported goods have been assigned by the Chief Controller.".

3 **Insertion of new sections 4B to 4P.**—After section 4A of the principal Act, the following sections shall be inserted, namely :—

4B. Power to enter and inspect.—Any person authorised in writing in this behalf by the Chief Controller or any officer serving under him, not being and officer below the rank of a Deputy Chief Controller (hereafter in this Act called the "authorised person"), may enter, at any reasonable time any premises in which—

(*i*) any imported goods or materials which are liable to confiscation under this Act, or

(*ii*) any books of account or other documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act, more

are suspected to have been kept or concealed, and inspect such imported goods, materials, books of account, other documents or things and may take such notes or extracts from such books of account or other documents as he may think fit.

4C. Power to search.—If the authorised person has any reason to believe that—

(*i*) any imported goods or materials which are liable to confiscation under this Act, or

(*ii*) any books of account or other documents or things which, in his opinion, will be useful for, or relevant to, any proceedings under this Act,

are secreted in any place, he may enter into and search such place or premises for such imported goods, materials, books of account, other documents or things.

4D. Power to seize imported goods or materials.—(1) If the authorised person has any reason to believe that any imported goods or materials are liable to confiscation under this Act, he may seize such goods or materials together with the package, covering or receptacle, if any, in which such goods or materials are found, and where such goods or materials are found to have been mixed with any other goods or materials, he may seize such goods or materials together with the goods or materials with which they are so mixed :

Provided that where it is not practicable to seize any such goods or materials, the authorised person may serve on the owner of the goods or materials an order that he shall not remove, part with or otherwise deal with, the goods or materials except with the previous permission of such authorised person.

( ) Where any goods or materials are seized under sub-section (1) and no notice in respect thereof is given under section 4L within six months of the seizure of the goods or materials, the goods or materials shall be returned to the person from whose possession they were seized :

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Chief Controller by a further period not exceeding six months.

(3) The authorised person may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.

(4) The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of the authorised person.

(5) If any person legally entitled to the documents or other things seized under sub-section (3) objects, for any reason, to the retention by the authorised person of the documents or things, he may make an application to the Central Government stating therein the reasons for such objection and requesting for the return of the documents or things.

(6) On receipt of an application under sub-section (5), the Central Government may, after giving the applicant an opportunity of being heard, pass such order as it may think fit.

(7) Where any document—

(a) is produced or furnished by any person or has been seized from the custody or control of any person under this Act or any other law for the time being in force, or

(b) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed) in the course of the investigation of any offence alleged to have been committed by any person against this Act,

and such document is tendered in evidence against the person by whom it is produced or from whom it was seized or against such person and any other person who is jointly tried, or proceeded against, with him, the court, or, as the case may be. the adjudicating authority shall, notwithstanding anything to the contrary contained in any other law for the time being in force,—

(i) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court or the adjudicating authority may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is under that person's handwriting, and, in the case of a document executed or attested, it was executed or attested by the person by whom it purports to have been so executed or attested;

(ii) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

4E. **Power to stop and seize conveyances.**—Any authorised person may, if he has any reason to suspect that any conveyance or animal is being, or is about to be, used for the transportation of any imported goods or materials which are liable to confiscation under this Act and that by such transportation any provision of this Act has been, is being, or is about to be, contravened, at any time stop such conveyance or animal or, in the case of an aircraft, compel it to land, and

(a) rummage and search the conveyance or any part thereof,

(b) examine and search any goods or materials in the conveyance or on the animal,

(c) if it becomes necessary to stop any conveyance or animal, he may use all lawful means for stopping it and where such means fail, the conveyance or animal may be fired upon.

and where he is satisfied that it is necessary so to do to prevent the contravention of any provision of this Act or of any control order or condition of any licence or letter of authority, he may seize such conveyance or animal.

Explanation.—Any reference in this section to a conveyance shall, unless the context otherwise requires, be construed as including a reference to an aircraft, vehicle or vessel.

4F. Search and seizure to be made in accordance with the Code of Criminal Procedure, 1973.—The provisions of the Code of Criminal Procedure, 1973, (2 of 1974), relating to searches and seizures, shall, so far as may be, apply to every search or seizure made under this Act.

4G. Confiscation.—Any imported goods or materials in respect of which –

(a) any condition of the licence or letter of authority, under which they were imported, relating to the utilisation or distribution of such goods or materials, or

(b) any condition relating to the utilisation or distribution of such goods or materials subject to which they were received from, or through, a recognised agency, or

(c) any direction given under a control order with regard to the sale of such goods or materials,

has been, is being, or is attempted to be, contravened shall, together with any package, covering or receptacle in which such goods are found, be liable to confiscation and, where such goods or materials are so mixed with any other goods or materials that they cannot be readily separated, such other goods or materials shall also be liable to confiscation :

Provided that where it is established to the satisfaction of the adjudicating authority that any goods or materials, which are liable to confiscation under this Act, had been or imported for personal use, and not

for any trade or industry, and that they belong to a person other than the person who has, by any act or omission, rendered them liable to confiscation, and such act or omission was without the knowledge or connivance of the person to whom they belong, such goods or materials shall not be ordered to be confiscated ; but such other action as is authorised by this Act may be taken against the person who has, by such act or omission, rendered such goods or materials liable to confiscation.

4H. Confiscation of conveyance.—Any conveyance or animal which has been, is being, or is attempted to be, used for the transport of any imported goods or materials which are liable to confiscation under this Act, shall be liable to confiscation unless the owner of the conveyance or animal proves that it was, is being, or is about to be, so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the convyance or animal and that each of them has taken all reasonable precautions against such use :

Provided that in the case of a conveyance or animal used for the transport of goods or passengers for hire, the owner of the conveyance or animal shall be given an option to pay, in lieu of confiscation of the conveyance or animal, a fine not exceeding the value of the imported goods or materials which have been, are being, or attempted to be, transported by such conveyance.

4I. Liability to penalty—(1) Any person who,—

(*a*) in relation to any goods or materials which have been imported under any licence or letter of authority uses or utilises such goods or materials otherwise than in accordance with the conditions of such licence or letter of authority ; or

(*b*) being a person to whom any imported goods or metarials have been delivered by a recognised agency, uses or utilises such goods or meterials or causes them to be

used or utilised, for any purpose other than the purpose for which they were delivered to him ; or

(c) having made a declaration for the purpose of obtaining —

(i) a licence or letter of authority to import any goods or meterials, or

(ii) any amendment of such licence or letter of authority, or

(iii) allotment of any imported goods or meterials, is found to have made in such declaration, any statement which is incorrect or false in meterial particulars, or

(d) acquires, sells or otherwise parts with, or agrees to acquire, sell or otherwise part with, any imported goods or materials in contravention of the conditions of any licence or letter of authority in pursuance of which such goods or meterials had been imported; or

(e) acquires, sells or otherwise parts with, or agrees to acquire, sell or otherwise part with, any imported goods or materials in contravention of the terms of any allotment made by any recognised agency ; or

(f) contravenes any direction given under a control order with regard to the sale of goods or materials which have been imported under any licence or letter of authority or which have been received from, or through, a recognised agency,

shall be liable to a penalty not exceeding five times the value of the goods or materials, or one thousand rupees, whichever is more, whether or not such goods or materials have been confiscated or are available for confiscation.

Explanation.—For the purposes of this section, "value" has the meaning assigned to it in sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962).

(2) If any person abets the commission of any act or omission, which act or omission would render any person liable to a penalty under sub-section (1), or attempts to commit any act aforesaid, the person so

abetting or attempting shall be liable to a penalty not exceeding five times the value of the goods or materials in respect of which such abetment or attempt has been made or one thousand rupees, whichever is more, whether or not such goods have been confiscated or are available for confiscation.

(3) A penalty imposed under sub-section (1) or sub-section (2) may, if it is not paid, be recovered as an arrear of land revenue:

Provided that the adjudicating authority may, by order, attach any money belonging to, or owed to, the person on whom any penalty has been imposed under sub-section (1) or sub-section (2), and such attachment shall be made in the same manner in which an attachment is made by a civil court.

4J Confiscation or penalty not to interfere with other punishments—No confiscation made or penalty imposed under this Act shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law for the time being in force.

4K Adjudication.—Any confiscation may be adjudged or penalty may be imposed under this Act,—

(a) by the Chief Controller, or, where he so directs, by a general or special order, by the Additional Chief Controller ;

(b) subject to such limit as may be specified in this behalf, by such other officer not below the rank of a Deputy Chief Controller, as the Central Government may, by notification in the Official Gazette, authorise in this behalf.

4L. Giving of opportunity to the owner of goods, etc. No order of adjudication of confiscation or imposing a penalty shall be made unless the owner of the goods, materials, conveyance or animal, or other person concerned, is given a notice in writing.

(i) informing him of the grounds on which it i proposed to confiscate such goods, materials, conveyanc or animal or to impose a penalty ;

(ii) giving him a reasonable opportunity of makin a representation in writing within such reasonable tim as may be specified in the notice against the confiscation or imposition of penalty mentioned therein, and, if he so desires, of being heard in the matter.

4M. Appeal.—(1) Any person aggrieved by any decision or order made under this Act may prefer an appeal,—

(a) where the decision or order has been made by the Chief Controller or Additional Chief Controller to the Central Government ;

(b) where the decision or order has been made by any officer below the rank of the Additional Chief Controller, to the Chief Controller or where he so directs, to the Additional Chief Controller.

within a period of forty-five days from the date on which the order is served on such person:

Provided that the Appellate authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the aforesaid period of forty-five days, allow such appeal to be preferred within a further period of forty-five days:

Provided further that in the case of an appeal against an order imposing a penalty, no such appeal shall be entertained unless the amount of the penalty has been deposited by the appellant :

Provided also that, where the Appellate authority is of opinion that the deposit to be made will cause undue hardship to the appellant, it may, at its discretion, dispense with such deposit either unconditionally or subject to such conditions as it may impose.

(2) The Appellate authority may, after giving to the appellant a reasonable opportunity of being heard, if he so desires, and after making such further inquiries, if any, as it may consider necessary, pass such orders as it thinks fit, confirming, modifying or reversing the decision or order appealed against, or may send back the case, with such directions as it may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary :

Provided that an order enhancing or imposing a penalty or confiscating goods or materials of a greater value shall not be made under this section unless the appellant has had an opportunity of making a representation, and, if he so desires, of being heard in his defence.

4N. Powers of revision of the Chief Controller.—The Chief Controller may, on his own motion or otherwise, call for and examine the records of any proceeding in which an order of adjudication of confiscation or imposing any penalty has been made by any officer subordinate to him and against which no appeal has been preferred, for the purpose of satisfying himself as to the correctness, legality or propriety of such order or decision and pass such orders thereon as he may think fit :

Provided that no decision or order shall be varied under this section so as to prejudicially affect any person unless such person—

(a) has, within a period of two years from the date of such decision or order received a notice to show cause why such decision or order shall not be varied, and

(b) has been given a reasonable opportunity of making representation and, if he so desires, of being heard in his defence.

4O. Power of adjudicating and other authorities.—(1) Every authority making any adjudication or hearing any appeal or exercising any powers of revision under this Act, shall have all the powers of a civil court under the

Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—

(a) Summoning and enforcing the attendance of witnesses ;

(b) requiring the discovery and production of any document ;

(c) requisitioning any public record or copy thereof from any court or office;

(d) receiving evidence on affidavits; and

(e) issuing commissions for the examination of witnesses or documents.

(2) Every authority making any adjudication or hearing any appeal or exercising any powers of revision under this Act shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Every authority making any adjudication or hearing any appeal or exercising any powers of revision under this Act shall have the power to make such orders of an interim nature as it may think fit and may also, for sufficient cause, order the stay of operation of any decision or order.

4P. Continuance of proceedings in the event of death or insolvency.—(1) Where a penalty has been imposed by the adjudicating authority and—

(a) no appeal against the order imposing such penalty has been preferred to the Appellate authority and the person entitled to file such appeal dies or is adjudicated an insolvent before the expiry of the period within which the appeal can be preferred, or

(b) an appeal has been preferred to the Appellate authority against the order imposing such penalty but the appellant dies or is adjudicated an insolvent during the pendency of the appeal,

then, it shall be lawful, for the legal representatives of such person or the Official Assignee or the Official Receiver, as the case may be, to prefer an appeal to the Appellate authority, or, as the case may be, to continue the appeal before the Appellate Authority, in place of such person and the provisions of section 4M shall, so far as may be, apply or continue to apply to such appeal.

(2) The powers of the Official Assignee or the Official Receiver under sub-section (1) shall be exercised by him subject to the provisions of the Presidency Towns Insolvancy Act, 1909 (3 of 1909), or the Provincial Insolveny Act, 1920, (5 of 1920) as the case may be;.

4. Amendment of section 5.—In section 5 of the principal Act,—

(i) after the words "any condition of a licence granted under any such order", the words "or any authority under which imported goods were received from or through a recognised agency" shall be inserted ;

(*ii*) for the words "be punishable with imprisonment for a term which may extend to two years and also with fine", the words—

"be punishable,—

(*a*) where the value of the goods, in relation to which such contravention or attempted contra-vention or abetment of contravention has been made, exceeds ten lakh rupees, with imprisonment for a term which may extend to sevenyears and also with fine, and

(*b*) in any other case, with imprisonment for a term which may extend to three years and also with fine :"

shall be substituted.

5. Insertion of new sections 5A and 5B.—After section 5 of the principal Act, the following sections shall be inserted, namely :—

'5A. Penalty for contravention of order made by dajudicating authority and Appellate authority.—If any

person fails to pay the penalty imposed by the adjudicating or the Appellate authority or fails to comply with any direction or order made, or deemed to have been made, under this Act, he shall, upon conviction by a court, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

5B. Correction of clerical or arithmetical mistakes.—Clerical or arithmetical mistakes in any decision or order, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the authority by which the decision or order was made either on its own motion or on the application of the aggrieved person :

Provided that where any correction proposed to be made under this section will have the effect of prejudicially affecting any person, no such correction shall be made except after giving to that person a reasonable oportunity of making a representation in the matter and no such correction shall be made after the expiry of a period of two years from the date on which such decision or order was made."

6. Insertion of new Section 8.—After section 7 of the principal Act, the following section shall be inserted, namely :—

"**8. Power to make rules.**—(1) The Central Government may, by notification in the Official Gazette make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(a) the person by whom, and the manner in which, any document received from a place outside India shall be authenticated,

(b) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Centrl Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

7. Repeal and saving.— (1) The Imports and Exports (Control) Amendment Ordinance, 1975 (19 of 1975), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act, as if this Act had come into force on the 4th day of November 1975.